

### **REMARKS**

The Non-Final Office Action mailed May 11, 2009 and the references cited therein have been carefully considered and Applicants respectfully request reconsideration. Claims 1-19 are currently pending in this application. By this Response, Applicants have amended Claim 1 and added new Claim 20. Support for the amendment to Claim 1 and new Claim 20 can be found in the specification, page 6, line 29 to page 7, line 13; Figure 5 and more generally throughout the specification and claims. Accordingly, no new matter is presented by these amendments. The amendments to the claims are not intended by the Applicants to change or limit the scope of the claims herein, particularly with regard to the prior art. Entry of these amendments is respectfully requested.

Applicants respond specifically below to the issues raised in the subject Office Action and respectfully request reconsideration thereof.

#### **Allowable Subject Matter**

Applicants appreciate and acknowledge the Examiner's indication of allowable subject matter recited in Claim 11. Applicant has maintained Claim 11 in dependent form at this time, in view of the remarks presented below with regard to the prior art rejections to the base claims.

#### **Claim Rejections under 35 USC § 103**

In the Office Action, Claims 1-10 and 12-19 have been rejected under 35 USC §103(a) as being obvious over U.S. Patent No. 6,060,143 to Tompkin et al. (hereinafter referred to as "Tompkin") in view of U.S. Patent No. 6,324,004 to Staub et al. (hereinafter referred to as "Staub"). The Office Action contends that Tompkin discloses substantially all the features of the rejected claims, with the exception of a plane defined by coordinate axes (x;y), wherein the superimposition function (M), the relief profile (R) and the diffraction structure are functions of the coordinate axes (x;y). Applicant respectfully traverses this rejection.

**Tompkin** discloses an optical security element having a composite laminate structure. The security element includes multiple layers, including two relief structures that are separated by a transparent carrier foil embedded between two relief structures. The two relief structures diffract light at different angles (see, Fig. 2 and Claim 1). However, as the two relief structures are separate and distinct structures, the overall laminate disclosed by Tompkin is clearly distinguished from the aspects of the invention, as recited in the claims. In Tompkin, there is more than one diffractive structure and both structures are similar to one another, such that one could not be considered a “microscopically fine relief profile (R)”, with the other being considered a “macroscopic structure.” Nor does Tompkin disclose a “central surface defined by the superimposition function (M)” that is “curved at least in partial regions and at any point has an angle of inclination predetermined by a gradient of the superimposition function (M).” Also, there is no mention in Tompkin about a surface portion having a dimension greater than 0.4mm. Further in Tompkin, the two separate relief structures 10 and 15 must be arranged in two different planes and have to be spaced apart at least 20 $\mu$ m (see Tompkin, Claim 1) in order to achieve its optical variable effects. Thus, these structures are not a relief structure formed by “superimposition function (M) and a microscopically fine relief profile (R) that follows along the superimposition function (M)”. In Tompkin, a diffractive structure is not formed by a single relief structure and neither of the two relief structures follows the other. Thus, Tompkin fails to disclose or reasonably suggest major elements of the claimed invention.

In the Office Action, **Staub** is cited for disclosing that a plane of a relief structure can be defined by co-ordinate axes (x;y). However, even if it were conceded that Staub teaches a plane of a relief structure being defined by co-ordinate axes (x;y), it would be inapplicable to Tompkin, which uses two different layers of relief structures. Also, Staub fails to teach or reasonably disclose the missing elements noted above with regard to Tompkin.

Thus, the combination of Tompkin and Staub do not disclose all the limitations of the claimed invention, particularly Claim 1. Also, it would not have been obvious to one of ordinary skill in the art at the time of the subject invention to alter and/or combine Tompkin and Staub in

order to arrive at the claimed invention. Applicants further submit that the Claims 2-20, which ultimately depend from Claim 1 are similarly patentable over the art of record by virtue of their dependence. Also, Applicants submit that claims 2-20 define patentable subject matter in their own right.

In view of the foregoing remarks, Applicants respectfully request reconsideration and allowance of the claims presented. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of Claims 1-10 and 12-20 under 35 U.S.C. § 103(a).

### **Conclusion**

Entry of the amendments herein and favorable consideration of Claims 1-20 are hereby solicited. In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner has any questions or suggestions to expedite allowance of this application, the Examiner is cordially invited to contact Applicant's attorney at the telephone number provided.

Respectfully submitted,

/tony a. gayoso/

Tony A. Gayoso  
Registration No.: 37,331  
Attorney for Applicant

HOFFMANN & BARON, LLP  
6900 Jericho Turnpike  
Syosset, New York 11791-4407  
(516) 822-3550

TAG:  
309792\_1.DOC